

**TEAMSTERS LOCAL NO. 853, IBT**

**AND**

**A & W DISTRIBUTORS**

**EFFECTIVE SEPTEMBER 1, 2004 – AUGUST 31, 2007**

THIS AGREEMENT, made and entered into this 1ST day of SEPTEMBER, 2004, by and between, A & W DISTRIBUTORS hereinafter referred to as the "Employer," and Local Union No. 853, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the "Union."

WITNESSETH:

**ARTICLE 1. DEFINITIONS**

Section 1. The term "Union" or "Local Union" refers to the local unions named above.

Section 2. "Employer" used in the singular shall be deemed to refer to A & W Distributors.

Section 3. "Employees" means all individuals covered by this Agreement who are in the employ of the Employer.

**ARTICLE 2. SCOPE OF AGREEMENT**

Section 1. The execution of this Agreement on the part of the Employer shall cover the operations of the Employer which is covered by this agreement and shall have application to the work performed within the classifications defined and set forth in the Agreement and the Agreements supplemental hereto.

Section 2. It is understood by the parties hereto that where there is a Supplemental Agreement specifically abridging or modifying the terms and conditions of the Agreement, the conditions or terms of the Supplemental Agreement shall be observed.

**ARTICLE 3. RECOGNITION, UNION SECURITY AND HIRING**

Section 1. Recognition. The Employer hereby recognizes the Local Union, as above named, as the exclusive collective bargaining agent and representative of the employees covered by this Agreement.

Section 2. Union Membership. Membership in the Union on or after the thirtieth (30th) day following the beginning of employment, or the effective date of this Agreement, whichever is later, shall be a condition of employment.

Upon written notice from the Union of failure on the part of any individual to complete or maintain membership in the Union as above required or of failure to tender payment to the Local Union, the Employer shall, within seven (7) days of such notice, discharge said employee.

Section 3. Hiring. Whenever a vacancy occurs, the Employer shall notify the Local Union, and the Local Union shall have a reasonable opportunity to refer applicants for

the vacancy to be filled. In hiring, the Employer shall give preference in employment to applicants previously employed in the fluid milk industry in the geographical jurisdiction covered by this Agreement. Selection of applicants for referral to jobs, shall be on a non-discriminatory basis and shall not be based on, or in anyway affected by, union membership, bylaws, rules, regulations, constitution provisions, or any other aspect of union membership, policies, or requirements. The Employer retains the right to reject any job applicant referred by the Union, provided that he shall not discriminate on account of membership or non-membership in any labor organization. The Employer agrees to notify the Union of the name or names of persons hired. Such notice will be in writing and by mail if the Local Union furnishes the Employer with self-addressed, stamped postcards or envelopes. Newly hired employees shall be required to report to the Union before starting work.

#### ARTICLE 4. CLASSIFICATION OF EMPLOYEES

Section 1. The classification of employees, for purposes of this Agreement, Supplemental Agreements and Wage Schedules attached hereto shall be defined as follows:

A. Driver-Salesperson and Ice Cream Driver-Salesperson

An employee who regularly serves specified lists of customers on a route (retail, wholesale or both) in a given territory. In making deliveries of milk products to grocery and market customers, the driver of the delivery vehicle shall place the products at any one of the following points at the customer selection:

1. Within the confines of the grocery store or market,
2. Up to the customer's refrigerated facilities,
3. Into the customer's refrigerated facilities.

B. Inside Person: all other employees employed in, about, and in connection with, the handling of milk, cream and other dairy products, including those engaged in whole or in part in warehousing, processing, operating and tending dairy machinery, loading and regularly washing trucks and equipment.

C. Relief Person: an employee who relieves another employee who is not working by reason of days off, sickness, vacation or other emergencies. When any employee has worked for seven (7) consecutive days, the Employer may replace him with another employee instead of a Relief Person, provided, however, that by agreement between the Employer and the Union, a regular employee may be hired to replace such employee before the expiration of the seven (7) days.

Section 2. Other classifications agreed upon by the Employer and the Union, and not covered herein, shall be covered by the appropriate Supplemental Agreement of such Local Union.

Section 3. The Employer may require an employee to perform work within the scope of two (2) or more classifications; an employee so engaged shall be classified and paid the highest rate of any classification of work performed.

Section 4. Any plant employee or hauler working any part of his regularly scheduled shift between 7:00 p.m. and 6:00 a.m. shall be classified as a "night employee" and entitled to night premium in accordance with the Wage Rate Schedule attached herein.

#### **ARTICLE 5. DISCHARGE AND DISCRIMINATION AGAINST EMPLOYEES**

Section 1. The Employer shall not discharge or discriminate against any employee for upholding Union principles, serving on a committee of the Union or any organization affiliated therewith.

Section 2. Employer shall not discharge or suspend any employee without just cause.

Section 3. Warning letters will not be valid after twelve (12) months from date of issuance.

Section 4. The Employer will notify the Union in writing of all discharges and suspensions. All discharges and suspensions are subject to the grievance procedure specified in Article 28 of this Agreement. The Union must protest a discharge or suspension in writing within seven (7) days following receipt of the notification from the Employer, or its right to protest will not be valid.

Section 5. There will be no discrimination in employment, or in conditions of employment, based on race, creed, national origin, sex, age, disability, or veteran's status as required by applicable law. Masculine pronouns used in this agreement shall apply to both sexes.

Section 6. Within 48 hours of suspension or termination, Employer will give written reasons for disciplinary action to the employee. Absence of such notification will not nullify the suspension or termination.

#### **ARTICLE 6. VISITATION**

It is hereby agreed by both parties that, for the purpose of carrying out and enforcing the terms of this Agreement, the Business Agent and/or Secretary Treasurer of the Union shall have the right of visiting and entering the establishment of the Employer.

#### **ARTICLE 7. PERSONS PROHIBITED**

No persons not members of the Local Union, subject to Article 3, Section 2, shall be permitted to ride on trucks or motor vehicles to serve on routes or assist regular employees in creameries or garages, and no collectors or solicitors shall be permitted

to serve any regular trade; provided, however, that the Foreperson or Assistant Route Foreperson shall be allowed to ride on vehicles for the purpose of checking and adjusting route schedules. Management personnel may ride such routes to observe adherence to established safety procedures.

#### ARTICLE 8. BULLETIN BOARD

The Union may use the Employer's bulletin board for the purpose of posting authorized Union notices or other materials relating to the administration of this contract.

#### ARTICLE 9. BONDING

Any Employer requiring a surety bond shall pay the premium for said bond.

#### ARTICLE 10. PHYSICAL EXAMINATION

Section 1. The Employer shall pay the cost of all physical examinations required of employees to obtain or retain employment with the Employer.

Section 2. In the event a physical examination is required by the company, on an employee's day off, the employee shall receive another day off with pay; provided, however, that this does not apply to post-offer physical examinations, physical examinations prior to returning to work after sickness or accident, or physical examinations for renewal of Class A or B license.

Section 3. An Employer and union negotiated Drug-Free Workplace policy has been established and is attached as an Addendum to this Agreement.

#### ARTICLE 11. TIME CLOCK

Section 1. Each Employer who has two (2) or more employees shall provide a time clock as a means of recording time for starting and quitting work, and will require all employees to punch the time clock.

Section 2. No driver-salesperson shall check out on the time clock until he has completed all of his work, including marketing and other bookkeeping duties. All time shall be computed from the time cards.

#### ARTICLE 12. CREDIT

Section 1. All cash customers shall pay cash unless credit for such customers is approved by the Employer. A driver salesperson shall not be responsible for unauthorized credit issued with the knowledge of the Employer.

Section 2. Employees shall not be responsible for shortages in money that is not counted and receipted at the time it is turned in.

Section 3. There shall be no deduction for shortages if the Employer retains overages.

Section 4. "Over" and "short" tags shall be furnished drivers on the second office work day following turn-in.

Section 5. An employee shall immediately be responsible for balancing cash to cash tags.

### ARTICLE 13. SICK LEAVE

#### Section 1. Eligibility

A. Any employee who has been employed by his present Employer for twelve (12) consecutive months is entitled to sick leave benefits. Any employee hired June 1, 1977, and thereafter must work two-thousand (2,000) straight-time hours to become eligible for sick leave benefits.

B. Benefits shall be payable commencing with the third day of absence because of illness or disability, from the employee's regularly scheduled work; provided, that if the employee is hospitalized overnight on the first or second day of his absence from work, benefits shall commence on the day of his overnight hospitalization, and provided further, that if the employee is absent from work because of an injury arising out of, or in the course of his employment, benefits shall commence with his first day of absence from work.

C. Paid sick leave benefits shall be payable only for days on which the employee is absent from regularly scheduled work, by reason of physical disability caused by accident or illness.

D. During the first twenty-six (26) weeks of an employee's absence each year, he shall receive sick leave benefits which, in combination with U.C.D. or Worker's Compensation benefits, will equal his normal straight-time earnings.

E. During the second twenty-six (26) weeks of an employee's absence during the same year, he shall receive sick leave benefits which, in combination with U.C.D. or Worker's Compensation benefits, will equal fifty percent (50%) of his normal straight time earnings.

F. "Normal straight time earnings" shall include an employee's shift differential, if applicable.

G. Sick leave benefits are not accumulative from year to year, nor are unused benefits convertible into cash to the employee at any time or under any circumstances.

H. The Employer may require documentary proof of illness or injury after an employee has been off work more than two (2) work days. The employee must notify the Employer of the status of his physical condition every ten (10) working days providing he is physically able to do so.

I. The maximum benefits for any one disability, or for disabilities caused by the same condition, will be those stated in sub-sections (B) through (H) above. Benefits for the same disability will be renewed if the employee returns to active covered employment for a period of twelve (12) months.

J. Except for disabilities caused by the same condition, as stated in sub-section (I) above, benefits for new disabilities will commence upon an employee's return to active covered employment.

### Section 2. Benefit Application

A. It is the employee's responsibility to file proper application, as provided by the Employer, for sick benefits to be paid by the Employer. Employees shall properly complete such sick benefit form for his Employer.

B. The Employer will provide standard forms. Employee's physically or mentally unable to complete said forms, will not suffer any loss of benefits.

### Section 3. Benefit Limitations

A. If an employee is certified as having a permanent disability, and if there is no reasonable expectation that he can return to work, and if he is eligible for a regular or disability pension under the Western Conference of Teamsters Pensions Plan, he will not be eligible for sick leave benefits.

B. An employee cannot receive benefits under the program if he receives a pension under the Western Conference of Teamsters Pension Plan.

C. An employee cannot receive benefits under this program for periods of time for which he receives vacation pay from the Employer.

D. An employee cannot receive benefits, under this program, for any disabilities excluded from the State Unemployment Compensation Disability Plan or Worker's Compensation Plan.

E. If an employee is certified and qualifies for a Social Security Disability Award, he is not entitled to sick leave benefits and he must notify his Employer immediately upon receipt of said Award.

F. If an employee's job or position is eliminated during the course of his illness, through normal attrition, he will become ineligible for sick leave benefits. However, before any

disqualification, an employee's status shall be reviewed by the Sick Leave Committee for determination.

Section 4. Benefit Determination

- A. For purpose of determining an employee's eligibility for benefits, the Sick Leave Committee may require an employee to be examined by a physician, of the committee's selection, with the cost being paid by the Employer.
- B. If an employee disputes the benefit amount paid by the Employer, he may request that his application be reviewed by the Sick Leave Committee.
- C. A decision rendered by the Sick Leave Committee may be referred to the grievance procedure of the Agreement, whose action shall be final and binding.
- D. The Sick Leave Committee shall consist of three (3) Employer representatives and three (3) Union representatives.
- E. Sick Leave benefits shall be paid by the Employer on the regularly scheduled pay days of the employee, provided the employee has complied with the application and notice requirements.

Section 5. Sick leave benefits for new employees hired after June 1, 1983, are as follows:

- (a) Six (6) weeks full pay in combination with U.C.D or Worker's Compensation will equal 100% normal straight-time earnings.
- (b) Twenty (20) weeks one-half (1/2) pay in combination with U.C.D. or Worker's Compensation will equal 50% normal straight-time earnings.

Section 6. Sick Leave benefits for all new employees hired after September 15, 1989, are as follows:

- (a) Benefits shall be earned at the rate of eight (8) hours per month up to a maximum of four-hundred (400) hours.
- (b) Employees shall start earning benefits the first day of the month following completion of six (6) months service.
- (c) Benefits shall be payable commencing with the third day of absence because of illness or disability, from the employee's regularly scheduled work; provided, that if the employee is hospitalized overnight on the first or second day of his absence from work, benefits shall commence on the day of his overnight hospitalization, and provided further, that if the employee is absent from work because of an injury arising out of, or

in the course of his employment, benefits shall commence with his first day of absence from work.

(d) Sick benefit payments including U.C.D. or Worker's Compensation payments for any week shall not exceed an employee's normal straight-time weekly earnings.

(e) Sick benefits are payable only for an employee's regularly scheduled work days on which he is absent.

(f) The Employer may require documentary proof of illness or injury after an employee has been off work more than two (2) work days. The employee must notify the Employer of the status of his physical condition every ten (10) working days providing he is physically able to do so.

(g) Sick leave benefits shall accrue only for employees who work eighty (80) hours or more per calendar month.

(h) Normal straight time earnings shall include an employees shift premium, if applicable.

#### **ARTICLE 14. VACATIONS**

Section 1. All employees with twelve (12) months continuous service shall be entitled to one (1) week of vacation with pay. Employees who have completed twenty-four (24) months' continuous service shall be entitled to two (2) weeks' vacation with pay. Employees who have completed seventy-two (72) months' continuous service shall be entitled to three (3) weeks' vacation with pay.

Section 2. In cases of severance of employment, vacations shall be prorated for employees having completed at least six (6) months of continuous service; provided, however, that pro-ration of the second week of vacation shall not apply to employees with less than twenty-four (24) months of continuous service. Pro-ration shall not apply to the third week of vacation for employees with less than seventy – two (72) months continuous service.

Section 3. Whenever an employee is required to work during his vacation, or any portion thereof, he shall be entitled to pay at twice the hourly rate of pay in addition to his vacation pay. Vacation schedules shall be posted at least thirty (30) days' in advance of the vacation period. Selection of vacation shall be on the basis of seniority.

Section 4. Employees may split their vacations, but initial vacation preference, arising out of seniority, shall only apply to the first vacation period selected, and shall apply again for the second choice after initial selection are made by all employees.

Section 5. Continuous service shall not be considered as broken, for purposes of this Article, by sick leave, absence due to injury or accident for which Worker's Compensation benefits are paid, authorized leaves of absence, or layoffs not exceeding twelve (12) months. It is understood, however, that vacation credit shall not be earned during such absences, and the employees may be required to work the length of time of such absence before being eligible for vacation.

Section 6. An employee shall accrue vacation benefits only for months in which the employee works eighty (80) hours or more.

#### ARTICLE 15. HOLIDAYS

Section 1. The following are recognized as holidays: New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day.

Section 2. The Employer shall be allowed to assign any regularly scheduled workday for such holiday during the week before, the week of, or the week after the holiday, or as an additional day off in conjunction with paid days off as provided in Article 30.

Section 3. To be eligible for holiday pay, an employee must work their scheduled work day immediately preceding and succeeding the holiday unless they have worked on the holiday, or are unable to work on either day by reason of verifiable illness or injury.

Section 4. A holiday not worked shall be counted toward fulfillment of the work week guarantee specified in Article 24.

Section 5. When a holiday occurs during an employee's vacation period, the employee shall receive an additional day's pay or an additional day off with pay.

Section 6. When any of the holidays specified in Section 1 occurs during an employee's work week, the employee shall be paid:

- A. Five (5) days pay if he works four (4) days, other than the holiday, and his regular day off is not changed.
- B. Five (5) days' pay if he works four (4) days including the holiday and his regular day off is not changed.
- C. Five and one-half (5-1/2) days pay if he works four (4) days including his regularly scheduled day off.
- D. Seven (7) days pay if he works five (5) days, including or excluding work performed on his regularly scheduled day off.

Section 7. An employee shall not be eligible for holiday pay during his first ninety (90) days of employment.

#### **ARTICLE 16. PENSION BENEFITS**

Section 1. The Employer shall pay into the Western Conference of Teamsters Pension Trust Fund for each of its employees employed in the bargaining unit upon the following basis:

A. For each employee who worked 160 straight-time hours or more during a calendar month:

Effective November 1, 2004      \$406.55

B. For each employee not covered in (A) above:

Effective November 1, 2004

\$ 94.00 per calendar week

\$ 18.80 per day

\$ 2.35 per hour (Accrual rate of \$2.02 per hour; PEER/80 rate of \$0.33 per hour)

For employees working a four ten-hour day workweek as provided in Article 40, pension contributions to the Western Conference of Teamsters Pension Trust Fund will be made at the following daily rate, when applicable (Employees not receiving the monthly or weekly pension contribution):

<u>Effective</u>	<u>Daily Rate</u>
11/1/04	\$23.50

The contribution required to provide the (Program for Enhanced Early Retirement) PEER/80 will not be taken into consideration for benefit accrual purposes under the Plan. The additional contribution for the PEER/80 must at all times be 16.5% of the basic contribution, and cannot be decreased or discontinued at any time.

Section 2. The Employer and the Union agree that, because the Trustees of the Fund will rely on the execution of this Agreement to restore or not reduce benefits to retiring employees, that this provision shall not be modified, terminated or rescinded by the parties hereto without the express written consent of the Trustees.

Section 3. For the purposes of this Article, paid holidays, paid vacations and paid days off in accordance with Article 31 of this Agreement shall be considered as time worked. No payments shall be required on overtime hours worked.

Section 4. No Employer shall be obligated to make payments into the Trust Fund in excess of those which are deductible from gross income by the Employer under Section 404 of the Internal Revenue Code.

Section 5. DIVERSION. The employees may vote to divert any of the wage increases (or portion thereof) into the Western Conference of Teamsters Pension Trust Fund with the understanding that the Company will be so notified. It is also understood and agreed any additional monies, which are contributed to the pension fund, through diversion or otherwise, shall be inclusive of PEER.

#### ARTICLE 17. HEALTH AND WELFARE PROGRAMS

Section 1. The Company shall make contributions for Health and Welfare coverage on behalf of all eligible employees to the **TEAMSTERS MANAGED TRUST FUND, WAREHOUSE PLAN, OPTION II**. The Plan shall provide for hospitalization, medical, life insurance, dental, orthodontic, prescription drug, and vision care for employees and eligible dependents. Hereinafter, the Teamsters Managed Trust shall be referred to as the Trust Fund.

Section 2. An employee shall be eligible for a monthly contribution to the Trust Fund if the employee works or is paid for eighty (80) hours in a calendar month. All contributions shall be made in the month following the month in which the employee has gained eligibility. For the purposes of this clause, all compensable hours shall count toward eligibility.

At the conclusion of the three (3) month "Waiver-of-Premium" period offered by the Trust Fund, the Company shall make contributions on behalf of employees with seniority who are off the job due to a disability or valid worker compensation claim, for a period not to exceed nine (9) additional months. This shall constitute of total of twelve (12) months of coverage.

Section 3. The current cap of eight hundred dollars (\$800.00) per month shall remain in effect until August 31, 2007. Amounts not used may be carried over to the succeeding adjustment periods. If the above amounts are exceeded, the employees shall pay, from pre-tax wages, the difference through payroll deduction.

Section 4. Notwithstanding any other provisions of the agreement to the contrary, the premiums paid to the Trust Fund mentioned in this Article shall be the Company's sole and only financial obligation toward health and welfare programs contained in this Agreement.

## ARTICLE 18. UNIFORMS

Section 1. The Employer shall launder all uniforms.

Section 2. All employees shall be required to maintain a clean and neat appearance at all times.

Section 3. The Employer shall supply all uniforms, which it requires employees to wear.

Section 4. Tanker-Receiver persons and clean-up persons shall be supplied with rubber boots. The following will apply:

A. The manufacturer, supplier and style of boot is to be determined by Employer.

B. No employee is to appear on the job without such boots where required by the Employer.

C. No employee shall wear the boots supplied by the Employer except on the job or in transit between job and home.

D. An employee applying for replacement of boots shall present them for inspection to the Employer's designated representative no less than seven (7) calendar days in advance of the time new boots are required.

The Employer shall replace such boots if they exhibit ordinary wear and tear sufficient to render them unfit for continued use.

In any case, boots shall not be replaced sooner than nine (9) months from the date of original issue and each subsequent issue.

## ARTICLE 19. JURY DUTY

Section 1. The Employer shall reimburse an employee for any loss in wage caused by such employee reporting for, or performing, jury duty.

Section 2. An employee called for jury duty need not report for work on that day, unless he is excused in time to put in at least four (4) hours of work.

Section 3. No employee shall be required to work a scheduled shift starting after 7:00 p.m. on the day before a day on which he is required to report for jury duty.

Section 4. An employee shall not be eligible for jury duty pay during his first ninety (90) days of employment.

Section 5. An employee serving on a Grand Jury shall not be eligible for the provisions of this Article.

Section 6. The Employer may require reasonable proof or verification of jury service.

#### ARTICLE 20. MEALS

One-half (1/2) hour shall be allowed for a meal between the third and fifth hour of work. If an employee is required to work three (3) or more hours of overtime, the Employer shall permit such employee an additional meal period not to exceed thirty (30) minutes. On a 4-10 hour day schedule, meal to be taken between 4th and 6th hour of work. All such meal periods shall be on the employee's own time.

#### ARTICLE 21. SEVERANCE PAY

Section 1. Whenever an employee is terminated at a location at which he works, he shall receive severance pay benefits pursuant to the provisions set forth below:

A. Upon the completion of six (6) full years' of unbroken service, with the same Employer, an employee shall be eligible for a severance benefit equal to forty (40) hours' of pay at the employee's regular straight-time rate of pay.

B. The employee shall be eligible for an additional forty (40) hours' severance pay benefit for each full additional year of unbroken service, with the same employer, through the fifteenth year. The maximum severance pay benefit shall not exceed four-hundred (400) hours.

C. No severance pay benefit shall be due under this Article to an employee under any of the following conditions:

1. The employee quits or is discharged for cause.

2. The employee is eligible to receive retirement benefits and has attained the age of sixty-five (65) years.

3. Prior to him termination, the employee is offered regular full time employment with the same Employer within a fifty (50) mile radius of the location where he was formerly employed. In the event the employee rejects the employment offer, he is not entitled to severance pay as set forth above. In the event the employee accepts the employment offer, and is subsequently terminated, except for cause, his company seniority shall be used in the calculation of severance pay.

D. An employee, at the time of layoff, will have the option to receive severance pay or retain recall rights for twelve (12) months, after which he shall be entitled to severance pay. If the plant ceases operation at any time during the twelve (12) months period of recall, and there is no other location within fifty (50) miles, severance payment shall be made at that time.

E. The seniority of an employee shall be broken upon his receipt of a severance pay benefit.

Section 2. For purposes of this Article, "unbroken service" shall mean the continuous service of an employee, with the Employer, which service is or was covered by a collective bargaining agreement between the Employer and one (1) or more Unions which are affiliated with the Dairy Teamsters of Joint Council #7.

## ARTICLE 22. PROTECTION OF RIGHTS

Section 1. It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action, in the event an employee:

A. refuses to enter upon property of his Employer involved in a lawful primary labor dispute sanctioned by the Union involved, or refuses to go through or work behind any lawful primary picket lines of Local Unions which are parties to this Agreement, at the premises of his Employer or any other employer, or

B. refuses to deliver goods to any destination where such goods are to be transported by another person through a lawful primary picket line, sanctioned by the Union involved, at the premises of any Employer.

Section 2. It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action, if any employee refuses to perform any service, which his Employer performs by arrangement with an employer or person whose employees are on strike.

## ARTICLE 23. WORKING HOURS AND OVERTIME

Section 1. Eight (8) hours shall constitute a day's work for all classifications and shall be worked within eight and one-half (8-1/2) consecutive hours. The day on which an employee punches in on the time clock shall be the designated day of work for payroll purposes.

Section 2. Any time worked in excess of eight (8) hours, but less than nine and one-half (9-1/2) hours, in any one day shall be overtime and shall be paid for at the rate of one and one-half (1-1/2) times the basic hourly rate. Any time worked in excess of nine and one-half (9-1/2) hours in any one day shall be overtime and paid at the rate of two (2) times the basic hourly rate, except for haulers.

Section 3. Five (5) days work, or pay in lieu thereof, will be guaranteed each employee during the work week.

Section 4. All employees shall receive two (2) days off each calendar week. Any scheduled days off not so received, shall be paid at the rate of two (2) times the regular

rate of pay. Any time worked in excess of nine and one-half (9-1/2) hours on a scheduled day off shall be paid at the rate of two (2) times the basic hourly rate except for haulers.

Section 5. A days off schedule shall be posted every thirty (30) days. In the event scheduled days off are changed without seven (7) days prior notice, employee working on scheduled days off shall be paid at the rate of one and one-half (1-1/2) times the straight time rate of pay.

Section 6. No employee shall be discharged or disciplined for refusal to work during his vacation or on his regularly scheduled days off. No employee shall be required to report for work within less than nine (9) hours after he finishes a regularly scheduled shift. An employee who is called back within nine (9) hours of the end of his regularly scheduled shift will receive time and one-half (1-1/2) times for all hours worked.

Section 7. It is agreed by the parties that all scheduled overtime will be reduced to the extent possible.

Section 8. Employees who work six (6) or seven (7) day schedules shall receive days off either consecutively or on a rotating schedule.

Section 9. An employee shall be notified of any changes in his starting time not later than the close of his shift on his preceding work day. If an employee's starting time is changed without the required notice, the employee shall be paid at the overtime rate for all hours worked before or after the regularly scheduled starting or quitting time.

All new employees hired on or after September 15, 1989, shall be employed at eighty percent (80%) of the appropriate Contract rate for the first six (6) months of employment and ninety percent (90%) of the appropriate Contract rate for the second six (6) months of employment; thereafter, the Contract rate shall apply.

#### ARTICLE 24. JURISDICTION OF OTHER UNIONS

When an employee covered by this Agreement is performing work within the jurisdiction of any other labor organization affiliated with the Teamsters, which represents employees performing work comparable to that covered by this Agreement in the dairy industry, such employee shall observe the conditions provided in that area, if such conditions are more restrictive, and shall receive the compensation provided for the kind of work performed, if greater than that under this Agreement or the applicable Supplemental hereto.

## ARTICLE 25. PRIVATE AGREEMENT

The Employer will not enter into any agreement with their employees, or any of them, which in any way conflicts with the terms and provisions of this Contract. Any such agreement shall be null and void.

## ARTICLE 26. SETTLEMENT OF DISPUTES

Section 1. All grievances of employees and disputes relating to the application, and enforcement of this Agreement, shall be referred initially to representatives of the Union and the Employer for settlement. Every effort shall be made to resolve differences at this level.

Section 2. In the event grievances or disputes are not settled within five (5) days under the foregoing procedure, the matter may be referred to a Grievance Committee. All such unresolved issues shall be in writing with copies to be served on the parties involved. The Union may be represented by any of its officers, agents or other authorized persons and the Employer may be represented by its management personnel or other authorized persons. Every effort shall be made to resolve differences at this level.

Section 3. The Grievance Committee shall be composed of two (2) representatives of the Company and two (2) representatives of the Union. No such representative shall be a direct employee of the Company or of the Union involved in the dispute. A Chairman and Secretary shall be designated from among the panel.

The Committee shall meet within ten (10) days after submission of a dispute by either party. Representatives of the Employer and the Union involved in the dispute shall have the right to appear before the Committee, and to present witnesses and argument in support of their respective positions. A decision of the Committee shall be by majority vote and shall be final and binding on the parties to the dispute.

Section 4. In the event the Grievance Committee divides equally in voting upon a dispute submitted, either party may request submission of the dispute to an impartial arbitrator, who shall be selected by the Employer and the Union involved. If they do not agree upon an arbitrator within five (5) days, either party shall be entitled to obtain a list of arbitrators from the State Conciliation Service, or the United States Mediation and Conciliation Service, and an arbitrator shall be selected therefrom by the strike-off method. The expense of arbitration shall be borne equally by the parties to the dispute.

The decision of the arbitrator shall be final and binding upon the parties to the dispute. The arbitrator shall not have the power to modify or amend the provisions of the Master Agreement and Supplements thereto.

Section 5. The foregoing procedures for the settlement of grievances shall not be available for handling claims of improper denial of employment by an applicant.

Section 6. Notwithstanding any provision of this or any other Article of the Matter Agreement, it shall not be a violation of this Agreement or of the Supplements thereto for the Union to engage in economic activity against an Employer for the purpose of compelling him to pay wages or contributions, which are being withheld in violation of the Agreement or Supplemental Agreements or for the purpose of compelling him to comply with a decision of the Grievance Committee or an arbitration award rendered under this Article.

#### ARTICLE 27. SUCCESSORS AND ASSIGNS

Section 1. This Agreement shall be binding upon the parties hereto, their successors-administrators, executors and assigns. In the event an entire operation is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceedings, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by this Agreement or any part thereof. Such notice shall be in writing with a copy to the Union, not later than the effective date of sale.

Section 2. In the event an Employer shall acquire the business in whole, or in part, of any other Employer who is party to this Agreement, or in the event an Employer moves an operation or a route, from the jurisdiction of one Local Union to the jurisdiction of another Local Union, and where both Local Unions are parties to this Agreement, the employees shall be given the opportunity to follow their jobs, or to accept employment resulting from the move, before new employees are hired. Such employees shall retain all rights and privileges which they held under this Agreement or any Supplemental Agreement at the time of the acquisition or movement of the operation; provided, however, that they shall have their seniority for purposes of layoff, call back and vacation selection only, calculated from the date they began employment, after the acquisition or movement of the operation.

#### ARTICLE 28. FIVE DAY OPERATIONS

Section 1. All plant employees who are employed in five (5) day processing plants, shall be entitled to one (1) full day's leave with pay for each calendar month, in addition to all other leave provided by this Agreement. By mutual agreement, between the employer and the union, such days of leave may be accumulated and granted to the employee quarterly. Where there is variation in processing practices, leave under this provision shall be prorated, in accordance with the number of weeks such plant qualified as a five (5) day processing plant.

Section 2. All wholesale drivers who are employed in a plant where five (5) day wholesale delivery is in effect, shall be entitled to one (1) full day's leave with pay for each calendar month, in addition to all other leave provided by this Agreement. By mutual agreement between the employer and the union, such days of leave may be accumulated and granted to the employee quarterly. Where there is variation in

wholesale delivery practices, leave under this provision shall be prorated, in accordance with the number of weeks such plant qualified as a five (5) day wholesale delivery plant.

Section 3. Hauler employed by an employer, within the area covered by this Agreement, who has either five (5) day processing or five (5) day delivery in effect, shall be entitled to one (1) full day's leave with pay for each calendar month, in addition to all other leave provided by this Agreement. Where there is a variation in the processing and/or delivery practices, leave under this provision shall be prorated in accordance with the number of weeks such plant qualified, i.e., five (5) day processing and/or delivery.

Section 4. A five (5) day processing plant, for purposes of this Article, shall include any plant which operates normal production five (5) days or less per week; provided, however, this shall not apply to an employee or employees working a four ten hour day schedule.

Section 5. The Employer may accumulate paid days off to a maximum of five (5) days and give such days off on a posted schedule with seven (7) days notice. The other provisions of this Article notwithstanding, the maximum accumulation for paid days off shall not exceed twelve (12) days.

Section 6. Employees who work where five (5) day processing or five (5) day delivery is in effect, shall be entitled to a prorate portion of the paid day off if they work less than a full month.

Section 7. The Employer cannot "close down" a route one (1) day per month to provide a paid day off.

Section 8. Other provisions of this Article notwithstanding, no employee shall be entitled to the provisions of this Article if such employee:

A. Receives consecutive days off (Saturday and Sunday), or

B. His days off are provided on a rotating schedule.

#### ARTICLE 29. SENIORITY

Section 1. In the event of layoffs, the Employer agrees to recognize seniority. In call backs after layoffs, the same principle shall apply.

Section 2. Seniority shall not be recognized during the first ninety (90) days of employment, which shall be a probationary period. The seniority of an employee with more than ninety (90) days of employment shall be calculated from his first day of employment. Seniority shall be broken by valid discharge, voluntary termination, or layoffs exceeding twelve (12) months. Employees off work for periods longer than twelve (12) months because of illness or injury may be given leaves of absence, in

which event their seniority shall continue. If a leave of absence should be refused in such a case, the matter may be treated as a grievance in accordance with the provisions of Article 28.

Section 3. Vacation selection shall be on the basis of seniority.

Section 4. Seniority shall be determined on a departmental basis departments for this purpose shall consist of plant employees, wholesale drivers and haulers.

In the event an employee accepts an opening in a different department, he shall retain seniority for vacation credit only.

All other seniority rights will be calculated from the date the employee is transferred to the new department.

#### **ARTICLE 30. JOB BIDDING**

Section 1. When a job vacancy occurs or a new job is created, such vacancy or new job, other than a Working Foreperson or Route Foreperson position shall be filled in the following manner and posted within five (5) days.

A. The job shall be posted for one-hundred twenty (120) hours in order that any interested employee may sign the bid sheet. All vacancies shall be posted upon a form, which shall give the job title or titles, in the case of a combination job, requirements, hours, days off and the wage rate of the job.

B. Qualified bidders shall be considered in the order of their seniority.

C. The job shall be awarded to the senior employee bidding on the job, provided that he is qualified to perform the job.

D. The successful bidder shall be placed on the job within fifteen (15) days of the award.

E. All successful job bids and/or vacancies shall be posted for informational purposes. A copy of all completed bids shall be sent to the Union.

F. Any vacancy or job opening that is reactivated within six (6) months of elimination shall not be posted or otherwise subject to the bidding procedures whenever the employee previously performing the job accepts appointment to said job.

G. In the event no bidder is qualified, or if no bids are received on a posted job, the job shall be filled by management appointment. If the employee selected by management does not wish to accept the job, it shall be filled by reverse seniority.

Section 2. The following rules shall govern all job bidding:

A. The Employer need not give consideration to any bid made by an employee during the first eighteen (18) months of his employment.

B. The Employer need not give consideration to any bid by an employee who has successfully bid on a job within the preceding eighteen (18) month period unless:

1. his regular days off are changed, or

2. his starting time or the length of his working day has been consistently changed by more than two (2) hours on two (2) days or more during the work week, or

3. his bid job has been eliminated.

C. The vacancy left open by the successful bidder shall be filled in the same manner as set forth in Section 1 above; however, all further vacancies shall be filled at the Employer's option.

D. The Employer has sole discretion in judging the qualifications of the bidder to perform the job, provided that any decision made shall not be arbitrary or discriminatory.

E. All bidding shall be on a departmental basis; departments for the purpose of this Article shall consist of plant employees, driver-salespersons and haulers.

#### ARTICLE 31. REMOVAL OF PERISHABLES

For the purpose of preventing spoilage of perishable commodities, the Union agrees that in the event of picketing or other economic action at the employer's premises by the Union, or any other union, work will continue for that period necessary to process, handle, remove and transport all perishable products on hand. Upon seventy two (72) hours notice from the union that a picket line has been established, or other economic activity is in process, the employer agrees to divert incoming deliveries. In the event the foregoing provision is violated (process, handle, remove and transport all perishable products on hand), then the Employer need not utilize the grievance and arbitration provisions of this Agreement.

**ARTICLE 32. WHOLESALE DRIVERS STARTING BEFORE 7:30 A.M.**

Section 1. All wholesale drivers starting work before 7:30 a.m. and making deliveries beyond the jurisdiction of their union shall receive the following premium:

Starting Time	Premium Per Day
7:00 a.m.	\$0.25
6:00 a.m.	\$0.50
5:00 a.m.	\$1.00

Section 2. Drivers starting work prior to 5:00 a.m. shall receive an additional premium calculated at the rate of fifty cents (\$0.50) for each hour, or fraction thereof, worked prior to 5:00 a.m.

Section 3. The Employer may establish a night delivery system; provided, however, that the number of route drivers on such a shift cannot exceed the number of route drivers on the day shift.

Section 4. All route drivers commencing after 6:00 p.m. and before 12:01 a.m. shall receive fifty cents (\$0.50) per hour for all hours worked and shall be designated as night delivery drivers.

Section 5. All premium paid in accordance with this Article shall be added to the base classification rate of pay and included in overtime computation.

**ARTICLE 33. STALE CLAIMS**

Claims for money owed under the Agreement or Supplemental Agreements need not be paid to the claimant for a period in excess of sixty (60) days prior to the submission of a grievance, where the claim is based on an arrangement or a manner of compensation in violation of such Agreements, in which the claimant knowingly participated.

**ARTICLE 34. FUNERAL LEAVE**

Section 1. In the event of the death of a member of the employee's immediate family, an employee will, at his/her request, be granted the following time off, with straight-time pay, to attend such funeral:

- A. The employee will be guaranteed two (2) days within the state of California.
- B. The employee will be guaranteed four (4) days for a funeral held outside the state of California.

C. The Employer will grant reasonable time off at the request of the employee to attend to pre and post burial matters without pay.

An employee must attend the funeral to be eligible for pay.

Section 2. For the purposes of this Article, a member of the immediate family is defined as spouse, daughter, son, mother, father, sister, brother, grandparents, grandchildren, mother-in-law, father-in-law or other relatives living in the employee's home.

Section 3. An employee shall not be eligible for funeral leave during his first ninety (90) days of employment.

#### **ARTICLE 35. INDEPENDENT CONTRACTOR**

Section 1. For the purposes of preserving job opportunities for employees covered by this Agreement, the parties hereto agree as follows:

A. That all work performed by employees of the Employer covered by this Agreement shall continue to be performed by employees covered by this Agreement, subject to elimination of routes.

B. That the number of routes distributing milk products, by other than employees of the individual Employer, shall not increase without the prior approval of the Union.

C. That no new routes shall be operated by other than employees of the individual employer without the prior approval of the Union.

#### **ARTICLE 36. DUES DEDUCTIONS**

Upon submission of signed authorization by an employee, the employer shall deduct from the first pay check of each month the amount of regular union dues for that month. It shall be the obligation of the union to compile a list of employees who have signed such authorizations, and to furnish such list to the employer, together with the authorizations, and to notify the employer of changes in the list, as they occur, for purposes of keeping the list current. Such amounts shall be transmitted to the union within fifteen (15) days following the date that deductions are made.

#### **ARTICLE 37. FOUR DAY WEEK**

Section 1. The Employer may establish a work week consisting of four ten hour days, providing that no employee will be laid off as the direct result of establishing such a schedule.

Section 2. An employee working such a schedule shall have at least two (2) consecutive days off.

Section 3. Double-time will be paid on all hours worked in excess of ten (10) hours per day. Hauler's overtime rates are subject to Article 25, Sections 3 and 4, respectively.

Section 4. Holiday, vacation, sick leave, funeral and jury duty pay shall be computed on the basis of ten (10) hour days.

Section 5. Once a four ten hour day (4-10) is established, the Employer agrees not to revert to a five eight hour day (5-8) schedule with the exception of a holiday week.

#### ARTICLE 38. MISCELLANEOUS

Section 1. The Employer agrees that there will not be an expansion of dock pickup sales to customers at its processing plants or depots.

Section 2. An employee desiring to quit his employment shall give three (3) days notice to his Employer. During said period, it shall be the duty of the terminating employee, when requested by the Employer, to teach the new employee his work. The Employer shall give three (3) days notice, or in lieu thereof, wages not to exceed three (3) days pay, except that notice or pay shall not be required when an employee is discharged for drunkenness or dishonesty. The above notice requirements shall not apply to any new employee whether or not a member of the Union for the first ninety (90) days of employment.

Section 3. Each employee may be required to attend not more than two (2) voluntary or involuntary meetings in any month, not held during the working hours of the employee; provided, that such meetings do not last more than one (1) hour each and that notice of such meeting is given at least one (1) day in advance, and that such meetings shall commence not later than the end of such employee's working day. For all time consumed in attendance at meetings, other than those above provided, or in excess of the time limits for such meetings, the employee shall be entitled to pay at the overtime rate. Meetings scheduled in accordance with this Article shall not exceed four (4) in any contract year. Five (5) day calendar notice will be given to employees.

Section 4. Wholesale route drivers, who deliver outside their local union jurisdiction and on twelve (12) hour runs and haulers on twelve (12) hour runs will be allowed expenses, not to exceed five dollars (\$5.00) for one meal. Haulers or drivers on runs that keep them away from their home barns on layover runs will be allowed reasonable expenses not to exceed thirty dollars (\$30.00). All meal periods shall be off the time clock.

Section 5. All employees will receive a rest period of reasonable duration during the first and second half of their shift.

### ARTICLE 39. WAGE RATES

Section 1. The minimum wages to be maintained by the Employer during the term of this agreement shall be as set forth in the Wage Schedule attached hereto, which by this reference becomes part of this Agreement.

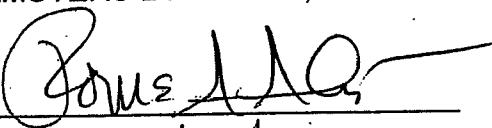
Section 2. Employees presently receiving compensation in excess of contract rates shall not suffer any reduction in their wage rates by reason of the execution of this Agreement.

### ARTICLE 40. TERM OF AGREEMENT

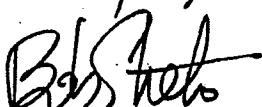
This Agreement shall become effective September 1, 2004, and shall remain in effect until August 31, 2007, and shall be considered renewed from year to year thereafter unless either party hereto gives written notice to the other of its desire to terminate or modify said Agreement at least sixty (60) days prior to August 31, 2004, or August 31 of any year thereafter.

IN WITNESS HEREOF, the parties hereto have executed this Agreement.

TEAMSTERS LOCAL 853, IBT

By 

Date 11/19/04

By 

Date 11/19/04

ENOCH, INC., DBA,  
A & W DISTRIBUTORS

By 

Date 1/13/2005

By \_\_\_\_\_

Date \_\_\_\_\_

## **SUPPLEMENTAL AGREEMENT**

This Agreement is supplemental to and becomes a part of the Agreement between A & W Distributors and Local 853.

This Supplemental Agreement shall be effective September 1, 2004, through August 31, 2007, and shall prevail over the specific terms of the Agreement only to the extent specifically provided hereafter:

### **ARTICLE 1. STARTING TIME**

All drivers shall be required to start work at a time that is mutually agreed with the employer. The size of routes shall be so adjusted and shall be such that, under normal circumstances, they may be completely served and the drivers checked in by 4:00 p.m. except special drivers who shall be checked in by 7:00 p.m. It is understood that all time consumed in checking in shall be part of the employee's scheduled work day.

### **ARTICLE 2. VEHICLES**

Drivers or employees shall be allowed or required to wash or grease any vehicles. All drivers are required to check and add water and oil for any/all vehicles.

### **ARTICLE 3. CHARITIES**

The Local Union agrees to handle all drives for charity, which it deems advisable.

### **ARTICLE 4. SETTLEMENT OF DISPUTES**

It is agreed that either party may refuse arbitration as provided in Article 28, Section 4 of the Agreement.

### **ARTICLE 5. TERM**

Term of the Supplemental Agreement and the May 1, 1998, Company Policy which shall be incorporated into this Agreement, and the procedure for modifying or terminating it, is subject to, and controlled by, all the provisions of the Agreement between the parties hereto.

TEAMSTERS LOCAL 853, IBT

By \_\_\_\_\_

*Bob Shetler*

Date \_\_\_\_\_

*11/19/09*

ENOCH, INC., DBA,  
A & W DISTRIBUTORS

By \_\_\_\_\_

*T. Forest*

Date \_\_\_\_\_

*11312005*

**WAGE RATE SCHEDULE**

Wage Rate Schedule = Hourly increases all employees

<u>CLASSIFICATION</u>	<u>9/1/04</u> \$0.50	<u>9/1/05</u> \$0.50	<u>9/1/06</u> \$0.50
<u>Wholesale</u>			
Route Foreperson (at Company Discretion)	20.65	21.15	21.65
Route Driver	20.99	21.49	21.99
Relief Driver (at Company Discretion)	20.34	20.84	21.34

New Hires: First six (6) months – 80%; 2nd six (6) months – 90%; Thereafter 100%

\*\*\*Wage increase will be paid on the closest Sunday to September 1st.